

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ALEXANDER FABRICS, LLLP,

Plaintiff,

v.

ROKA APPAREL PRODUCTS, LLC

Defendant.

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

C.A. No. 1:07-cv-00174 GMS

**DEFENDANT ROKA APPAREL PRODUCTS, LLC'S MOTION TO DISMISS  
FOR LACK OF JURISDICTION OVER THE SUBJECT MATTER OR, IN THE  
ALTERNATIVE, TO STAY**

Defendant RoKa Apparel Products, LLC ("RoKa"), by and through its undersigned counsel, hereby moves this Honorable Court for an Order dismissing the above-captioned action for lack of subject matter jurisdiction under Fed. R. Civ. Pro. 12(b)(1) or, in the alternative, staying this litigation in favor of a related action filed in Florida in which the parties can obtain complete relief on their claims, all of which arise under state law. In support thereof, Defendant states as follows:

1. On March 26, 2007, plaintiff Alexander Fabrics, LLLP ("Alexander") initiated this collection action by filing a Complaint with this Court.

2. In its Complaint, Alexander alleged that it is a North Carolina limited liability partnership with a principal place of business in North Carolina, and that RoKa is a Delaware limited liability company with a principal place of business in Jacksonville, Florida. See Complaint at ¶¶ 2-3, 7.

3. Alexander further alleged in its Complaint that this Court has diversity jurisdiction over this matter under 28 U.S.C. § 1332. See Complaint at ¶ 4. Alexander does not

allege in the Complaint that any other bases exist for this Court to exercise jurisdiction over this matter.

4. On April 30, 2007, RoKa initiated a lawsuit against Alexander in the Circuit Court, Fourth Judicial Circuit in and for Duval County, Florida, Case No.16-2007-CA-000151 (the "Florida Action"), in which RoKa seeks to recover damages from Alexander for its failure to provide fabrics in conformance with contracts entered into with RoKa in Florida. As alleged by RoKa, Alexander's misconduct in shipping nonconforming goods to RoKa in Florida resulted in the alleged non-payment of the invoices at issue in the instant litigation, each of which was issued by Alexander to RoKa at its Jacksonville, Florida office. See Exhibit A to the Complaint. RoKa is seeking damages in the Florida Action in excess of those sought by Alexander in the instant action.

5. Because Alexander has alleged that this Court has jurisdiction over the instant matter based on diversity of citizenship under 28 U.S.C. § 1332, Alexander has the burden of pleading all parties' citizenship such that the existence of complete diversity can be confirmed.

6. As a limited liability company, RoKa is a citizen of the states of which its individual members are citizens.

7. Alexander has not alleged in its Complaint the citizenship of RoKa's individual members, thereby preventing this Court from confirming that complete diversity exists among the parties and exercising subject matter jurisdiction. Therefore, this Court should dismiss this action for lack of subject matter jurisdiction.

8. Considering the interests implicated in this matter, the parallel litigation pending in the Florida Action, and the fact that the only tenuous link Delaware has to this controversy is

that RoKa was formed in Delaware, this Court should dismiss the instant lawsuit with prejudice so this dispute can be fully and effectively litigated in the pending Florida Action.

9. If this Court is not inclined to dismiss the instant case with prejudice, the interests of justice, judicial efficiency, and judicial economy would be best served by staying this case pending the outcome of the related lawsuit pending in the Circuit Court in Duval County Florida.

WHEREFORE, RoKa respectfully requests that the Court dismiss this action with prejudice for lack of subject matter jurisdiction or, in the alternative, stay it pending the outcome of the related pending Florida Action.

Respectfully submitted,

Dated: May 4, 2007

By: 

John C. Phillips, Jr. (#110)  
PHILLIPS, GOLDMAN & SPENCE, P.A.  
1200 N. Broom Street  
Wilmington, Delaware 19806  
Tel. No. (302) 655-4200

Of counsel:  
Barbara Slott Pegg  
Attorney at Law  
316 Sea Moss Lane  
Ponte Vedra Beach, Florida 32082  
Tel. No. (904) 285-8100

Attorneys for Defendant,  
RoKa Apparel Products, LLC

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

ALEXANDER FABRICS, LLLP,

Plaintiff,

v.

ROKA APPAREL PRODUCTS, LLC

Defendant.

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

C.A. No. 1:07-cv-00174 GMS

**ORDER**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 2007, upon consideration of  
defendant RoKa Apparel Products, LLC's Motion to Dismiss for Lack of Jurisdiction Over the  
Subject Matter or, in the Alternative, to Stay (the "Motion") and any response thereto;

IT IS HEREBY ORDERED that the Motion is GRANTED;

IT IS FURTHER ORDERED that this action is dismissed with prejudice in its entirety.


---

The Hon. Gregory M. Sleet

**CERTIFICATE OF SERVICE**

I, John C. Phillips, Jr., hereby certify that, on May 4, 2007, the foregoing Motion to Dismiss for Lack of Jurisdiction Over the Subject Matter or, in the Alternative, to Stay was hand delivered to the following person and was electronically filed with the Clerk of Court using CM/ECF, which will send notification that such filing is available for viewing and downloading from CM/ECF to the following:

Chad Michael Shandler, Esquire  
Richards, Layton & Finger  
One Rodney Square  
P.O. Box 551  
Wilmington, DE 19899

  
\_\_\_\_\_  
John C. Phillips, Jr. (#110)